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26 NOV 1997

GIOK DJIEN GO  
PFAHLGRABENST.45  
D-65510 IDSTEIN  
GERMANY

In re Application of  
GIOK DJIEN GO  
Application No.: 08/860,182  
Filing Date: 22 June 1997  
For: DOOR FOR PASSENGER CAR OR  
TRUCK

COMMUNICATION

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 07 November 1996, applicant filed international application PCT/DE96/02120, which claimed priority of an earlier German application filed 17 November 1995. A copy of the international application was transmitted to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB) upon publication of the international application on 29 May 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 June 1997. Accordingly, the thirty month period for paying the basic national fee in the United States expires at midnight on 18 May 1998 since 17 May 1998 is a Sunday.

On 22 June 1997, applicant filed a transmittal letter to the United States concerning a filing under 35 U.S.C. 371 (FORM PTO-1390) which was accompanied by, inter alia, a specification, claims, an abstract, drawings, a small entity statement, and two sheets labeled "DECLARATION" consisting of two sheets of form PTO/SB/01 (8-96) numbered "Page 2 of 5" and "Page 4 of 5".

### DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT )" states, in part:

If there are any conflicting instructions as to which section of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

The transmittal letter filed on 22 June 1997 identified the application as "a filing under 35 U.S.C. 371." The specification, filed on the same date identified, at the top of the first page, the papers as a "continuation-in-part application of co-pending international application number PCT/DE96/02120". The "declaration" filed on 22 June 1997 fails to include any statement clearly identifying the specification to which the declaration is directed.

Applicant's reference to the papers as a continuation-in-part application at the top of the first page of his specification is inconsistent with the transmittal letter filed 22 June 1997 and contradicts the request in the transmittal letter to file under 35 U.S.C. 371. The transmittal letter (FORM PTO-1390) used by applicant is to be used only with submissions under 35 U.S.C. 371. Since applicant gave conflicting instructions, the papers are considered as having been filed under 35 U.S.C. 111.

Applicant has claimed benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application PCT/DE96/02120 for the subject matter common to the above-identified US application number 08/860,182 and the international application PCT/DE96/02120. Applicant is reminded that in order to perfect the claim for priority under 35 U.S.C. 119 to the prior German application number 195 43 706.3, upon which a claim for priority was based in the international application, applicant must submit a certified copy of the priority document. The certified copy of the priority document submitted to the IB cannot be relied upon to perfect the claim for priority. See MPEP 1895.01.

Applicant must supply the fee required by law and an oath by the applicant in compliance with 35 U.S.C. 115 as required by 35 U.S.C. 111. The requisite fee includes the basic reduced filing fee for an applicant claiming small entity status of \$395.00 required by 37 CFR 1.16(a), the \$154.00 reduced fee for an applicant claiming small entity status for 14 claims in excess of twenty required under 37 CFR 1.16(c), and the \$135.00 reduced fee for an applicant claiming small entity status for multiple dependent claims required under 37 CFR 1.16(d). Additionally, applicant must pay the \$65.00 reduced surcharge for an applicant claiming small entity status

for the filing the basic filing fee or oath or declaration on a date later than the filing date of the application as required under 37 CFR 1.16(e).

CONCLUSION

This application is accepted as an application filed under 35 U.S.C. 111 with a filing date of 22 June 1997.

The papers communicated from the IB to the USPTO concerning international application PCT/DE96/02120 have been removed.

This application will be forwarded to the Office of Initial Patent Examination for processing as a national application filed under 35 U.S.C. 111 with a filing date of 22 June 1997.

The application number will continue to be 08/860,182 and applicant should include this application number on all future correspondence with the USPTO concerning this US application.

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